



(Billing Code 5001-06-P)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 252**

**RIN 0750-AH57**

**Defense Federal Acquisition Regulation Supplement: Alleged Crimes By or Against Contractor Personnel (DFARS Case 2012-D006)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to expand coverage on contractor requirements and responsibilities relating to alleged crimes by or against contractor personnel.

**DATES:** Comment Date: Comments on the proposed rule should be submitted in writing to the address shown below on or before [Insert date 60 days after date of publication in the **FEDERAL REGISTER**], to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2012-D006, using any of the following methods:

o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2012-D006" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that

corresponds with "DFARS Case 2012-D006." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012-D006" on your attached document.

- o Email: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2012-D006 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Meredith Murphy, telephone 571-372-6098.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to revise the DFARS clause at 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, to expand coverage on contractor requirements and responsibilities regarding alleged

crimes by or against contractor personnel. The expanded coverage is proposed to apply to contingency operations, humanitarian or peacekeeping operations, or other military operations when the latter are designated by the combatant commander. These requirements currently apply only to DoD contracts performed in Iraq and Afghanistan. Expanding the coverage worldwide will provide contractors the guidance they need to take actions if such alleged offenses occur.

Currently, the clause at 252.225-7040 is prescribed at 225.7402-5(a). The clause prescription requires insertion of the clause in solicitations and contracts that authorize contractor personnel to accompany U.S. Armed Forces deployed outside the United States in (1) contingency operations; (2) humanitarian or peacekeeping operations; or (3) other military operations or military exercises, when designated by the combatant commander. The expanded DFARS clause will require the contractor to provide information to contractor personnel who perform work on a contract in those countries about how and where to report an alleged crime and, for contractor personnel seeking whistleblower protection, where to seek assistance. The crimes referred to are alleged offenses under the Uniform Code of Military Justice (10 U.S.C. 47) or the Military Extraterritorial Jurisdiction Act (18 U.S.C. 212). The clause also provides a list of the appropriate investigative authorities to which suspected offenses can be reported, e.g., "U.S. Army Criminal

Investigations Division at

<http://www.cid.army.mil/reportacrime.html>," and contact information for contractor personnel seeking whistleblower protection. This information is required by the terms of the clause to be provided to contractor personnel before they begin work on a contract in a deployed area.

## **II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## **III. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the requirement is only to provide

information to contractor personnel regarding the appropriate investigative authorities to which suspected offenses can be reported and contact information for contractor personnel seeking whistleblower protection. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The two key requirements being proposed are for the contractor to (a) report any alleged offenses against the Uniform Code of Military Justice (UCMJ) and the Military Extraterritorial Jurisdiction Act (MEJA) to appropriate investigative authorities and (b) give contractor personnel who work in covered areas information on how and where to report an alleged UCMJ or MEJA offense. The clause also would provide contact information for the three Service Criminal Investigative Agencies and the DoD Inspector General.

In FY 2010, DoD awarded 788 contracts for performance in Iraq and 1,051 contracts for performance in Afghanistan. Twenty percent of these contracts were awarded to small businesses. As DoD exits the areas of current contingency operations, e.g., Iraq and Afghanistan, the total number of DoD contracts awarded for performance in the subject areas is expected to decrease by at least 50 percent. However, the proportion of these contracts that are awarded to small businesses is anticipated to remain the same. Therefore, this estimate is that there may be as many

as 919 contracts awarded annually and approximately 184 of these contracts will be awarded to small businesses.

There are no projected reporting, recordkeeping, or other compliance requirements associated with the proposed rule. The rule will apply equally to all contractors, large and small, performing in deployed areas. The rule does not duplicate, overlap, or conflict with any other Federal rules. The points of contact for reporting criminal acts and/or seeking whistleblower protection are listed in the clause. Contractor compliance requirements have been limited to passing this clear, available information to their personnel. No alternatives to the rule have been identified that could accomplish the objectives of the rule or minimize further its economic impact on small entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2012-D006), in correspondence.

#### **IV. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 252**

Government procurement.

**Ynette R. Shelkin**

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 252 as follows:

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Section 252.225-7040 is amended by removing the clause date "(JUN 2011)" and adding "(DATE)" in its place and revising paragraph (d) to read as follows:

**252.225-7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.**

\* \* \* \* \*

(d) Compliance with laws and regulations.

(1) The Contractor shall comply with, and shall ensure that

its personnel authorized to accompany U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

- (i) United States, host country, and third country national laws;

- (ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;

- (iii) United States regulations, directives, instructions, policies, and procedures; and

- (iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(3) The Contractor shall ensure that contractor employees accompanying U.S. Armed Forces are aware—

- (i) Of the DoD definition of "sexual assault" in DoDD 6495.01, Sexual Assault Prevention and Response Program;

- (ii) That the offenses addressed by the definition are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause); and



(iii) That other sexual misconduct may constitute offenses under the Uniform Code of Military Justice, Federal law, such as the Military Extraterritorial Jurisdiction Act, or host nation laws, and that the offenses not covered by the Uniform Code of Military Justice may nevertheless have consequences to the contractor employees (see paragraph (h)(1) of this clause).

(4) The Contractor shall report to the appropriate investigative authorities, identified in paragraph (d)(6) of this clause, any alleged offenses under--

(i) The Uniform Code of Military Justice (10 U.S.C. 47) (applicable to contractors serving with or accompanying an armed force in the field during a declared war or contingency operation); or

(ii) The Military Extraterritorial Jurisdiction Act (18 U.S.C. 212).

(5) The Contractor shall provide to all contractor personnel who will perform work on a contract in the deployed area, before beginning such work, information on the following:

(i) How and where to report an alleged offense described in paragraph (d)(4) of this clause.

(ii) Where to seek victim and witness protection and assistance available to contractor personnel in connection with an alleged offense described in paragraph (d)(4) of this clause.

(6) The appropriate investigative authorities to which

suspected crimes shall be reported include the following officials:

(i) US Army Criminal Investigations Division at

<http://www.cid.army.mil/reportacrime.html>.

(ii) Air Force Office of Special Investigations at

<http://www.osi.andrews.af.mil/library/factsheets/factsheet.asp?id=14522>.

(iii) Navy Criminal Investigative Service at

<http://www.ncis.navy.mil/Pages/publicdefault.aspx>.

(iv) Any command of any supported military element or the command of any base.

(7) Personnel seeking whistleblower protection from reprisals for reporting criminal acts shall seek guidance through the DoD Inspector General hotline at 800-424-9098 or [www.dodig.mil/HOTLINE/index.html](http://www.dodig.mil/HOTLINE/index.html). Personnel seeking other forms of victim or witness protections should contact the nearest military law enforcement office.

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